



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Valentec Kisco, Inc.

File: B-234421

Date: March 9, 1989

DIGEST

1. Allegation that contracting agency improperly evaluated proposals is dismissed as untimely when raised over 6 months after award since the protester failed to diligently seek information to determine whether a basis of protest existed.
2. General Accounting Office will not consider the merits of an untimely protest issue under the significant issue exception to its timeliness requirements where the issue is not of widespread interest to the procurement community.

DECISION

Valentec Kisco, Inc., protests the award of contracts to AMRON Corporation, EMCO, Inc., and Heckethorn Corporation under request for proposals (RFP) No. DAAA09-88-R-0074, issued by the Army for M42, M46 and M77 grenade bodies. Valentec argues that the agency improperly conducted the comparison between the award of multi-year and single-year contracts.

We dismiss the protest as untimely.

The RFP, issued on March 9, 1988, requested firm, fixed-price offers on both a single-year basis and a multi-year basis for various quantities of grenade bodies. Multiple awards were contemplated. The RFP contained an evaluation scheme to determine whether it would be advantageous to make award on the basis of single-year or multi-year contracts. Single-year prices were requested in three quantity ranges and a level unit price based on supplying the total quantity over a 3-year period was requested for the multi-year contract. On May 31 a single-year contract was awarded to the protester and multi-year contracts for various quantities were awarded to AMRON, EMCO and Heckethorn.

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Valentec argues that the agency's stated evaluation scheme contemplated comparing the multi-year prices to the lowest single-year price offered instead of to the lowest price offered within each of the three ranges.

According to Valentec, sometime in October it orally requested copies of the agency's evaluations which were then provided to it on October 19. Valentec states that it did not review the documents until mid-November. After a meeting with contracting officials on November 22, Valentec protested the evaluation methodology to the agency by letter dated December 8. After the agency denied Valentec's protest by letter dated January 23, 1989, it filed the current protest with our Office.

Our Bid Protest Regulations require that protests other than those based on solicitation improprieties be filed within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). Further, our Regulations provide that in order for us to consider a protest after an initial agency-level protest has been filed, the initial protest must have been timely filed with the agency under the above-cited 10-day requirement. 4 C.F.R. § 21.2(a)(3). Also the protester has an affirmative obligation to diligently pursue the information that forms the bases of its protest. Horizon Trading Co., Inc., et al., B-231177 et al., July 26, 1988, 88-2 CPD ¶ 86. The fact that the agency considers an untimely agency-level protest does not waive our timeliness requirements. Republic Maintenance of Kentucky, Inc., B-231123, June 2, 1988, 88-1 CPD ¶ 524.

Valentec states that the precise date it knew the basis of its protest is not determinable because up until December 8 it was analyzing the data it had received in October from the agency. Even if it is true that Valentec did not discover the basis of its protest until December 8, the protester's actions were not in our view consistent with its obligation to pursue diligently the information that reasonably would be expected to reveal whether a basis for protest exists. Horizon Trading Co., Inc., et al., B-231177 et al., supra.

In this regard, the firm waited over 4 months after contract award to request evaluation documents from the agency. It made no attempt during that time to ascertain the reasons for the awards made to the other firms. It then waited over 7 weeks from receipt of the documents before filing its protest with the agency. We consequently find that Valentec took more than a reasonable amount of time to

develop this protest so we dismiss it as untimely.
Greishaber Mfg. Co., Inc., B-222435, Apr. 4, 1986, 86-1 CPD ¶ 330.

Valentec requests that, even if its protest is untimely, we should consider it under the exception to our timeliness rules for significant issues. 4 C.F.R. § 21.2(b). This exception is strictly construed and sparingly used to prevent the rules from becoming meaningless. We will invoke it only if the subject of the protest concerns a matter of widespread interest to the procurement community and involves a matter that has not been considered on the merits in prior decisions. Dixie Air Parts Supply, Inc., B-230088, Apr. 11, 1988, 88-1 CPD ¶ 355. The protest before us which involves an evaluation scheme which is particular to the solicitation here does not appear to present an issue whose resolution would be of widespread interest to the procurement community.

The protest is dismissed.

John Brosna

for Ronald Berger
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